

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

July 1, 2002

RESPONSIBLE STAFF:

Trudy Schwarz, Senior Planner

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
X	Public Hearing
	Historic District
	Consent Item
	Ordinance
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	06/17/02
Advertised	06/19/02
Hearing Held	07/01/02
Record Held Open	
Policy Discussion	

TITLE:

Public Hearing, Abandonment Application AB-54, An Ordinance to Conditionally Abandon 0.0093 Acres or 403 sq. ft. of Land Dedicated for Right-of-Way for Meem and West Diamond Avenues, situated in the subdivision known as Meem's Addition, in the City of Gaithersburg, Montgomery County, Maryland

SUPPORTING BACKGROUND:

This is a public hearing to conditionally abandon this small portion of right-of-way at the intersection of Meem and West Diamond Avenues. In 1990 this area was dedicated as part of an office development proposal on the property which called for demolition of the existing house. (See Exhibits #4 and #5.) The development was never built nor was the house demolished. This has created a cloud on the title of the property because a portion of the house is in the right-of-way. The owner and his representative have been working with City staff and the State Highway Administration (SHA) to resolve this issue by conditionally abandoning a portion of the right-of-way until there is further development on the property.

The **PLANNING COMMISSION** reviewed this abandonment petition and recommended that the Mayor and City Council adopt the ordinance approving the abandonment with the condition related to the requests of SHA. (Exhibit #22)

Attached are the following: Notice of Public Hearing & location map and list of exhibits with exhibits attached, including the Staff Analysis and Planning Commission Recommendation (both on goldenrod color paper).

Staff recommends that the record for this hearing be left open for 10 days. The item would return to the Council on July 15, 2002 for Policy Discussion.

DESIRED OUTCOME:

Conduct Hearing and hold the record open for 10 days (July 10, 2002).

**Schedule for Policy Discussion July 15, 2002
Mayor & City Council Meeting**



CITY OF GAITHERSBURG
31 South Summit Avenue
Gaithersburg, Maryland 20877
Telephone: 301-258-6330

NOTICE OF PUBLIC HEARING

The City of Gaithersburg Mayor and Council will conduct a public hearing at the time and place noted below.

Meeting: **MAYOR AND CITY COUNCIL MEETING**
Application Type: **ABANDONMENT APPLICATION**
File Number: **AB-54**
Location: **100 WEST DIAMOND AVENUE**
Applicant: **JAMES KAO**
Development: **MEEM'S ADDITION**
Day/ Date/Time: **MONDAY, JULY 1, 2002, 7:30 P.M.**
Place: **COUNCIL CHAMBERS, GAITHERSBURG CITY HALL
31 SOUTH SUMMIT AVENUE**

*****IMPORTANT*****

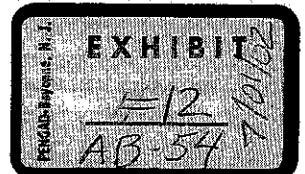
This is a proposal to requests abandonment of approximately 0.0093 acres (or 403 square feet) of land previously dedicated for a road right of way for Meem and West Diamond Avenues for Lot 42 Meem's Addition to Gaithersburg (100 West Diamond Avenue), Gaithersburg, Maryland.. Contact the Planning and Code Administration City Planner (listed below) at (301) 258-6330 if you should have any questions and/or to learn more about this process and your ability to offer testimony and input.

Mayor and City Council & Planning Commission meetings can be viewed live on Gaithersburg Cable Television Channel 13, and at anytime, (on demand) via the Internet and Web TV at <http://www.ci.gaithersburg.md.us>.

CITY OF GAITHERSBURG

By: Trudy M. W. Schwarz
Trudy M. W. Schwarz, Sr. Planner
Planning and Code Administration

SEE LOCATION MAP ON REVERSE SIDE



NOTICES SENT THIS 14th OF JUNE TO:

APPLICANT AND INTERESTED PARTIES

(A list of interested parties and agencies is available in the file in the Planning and Code Administration.)

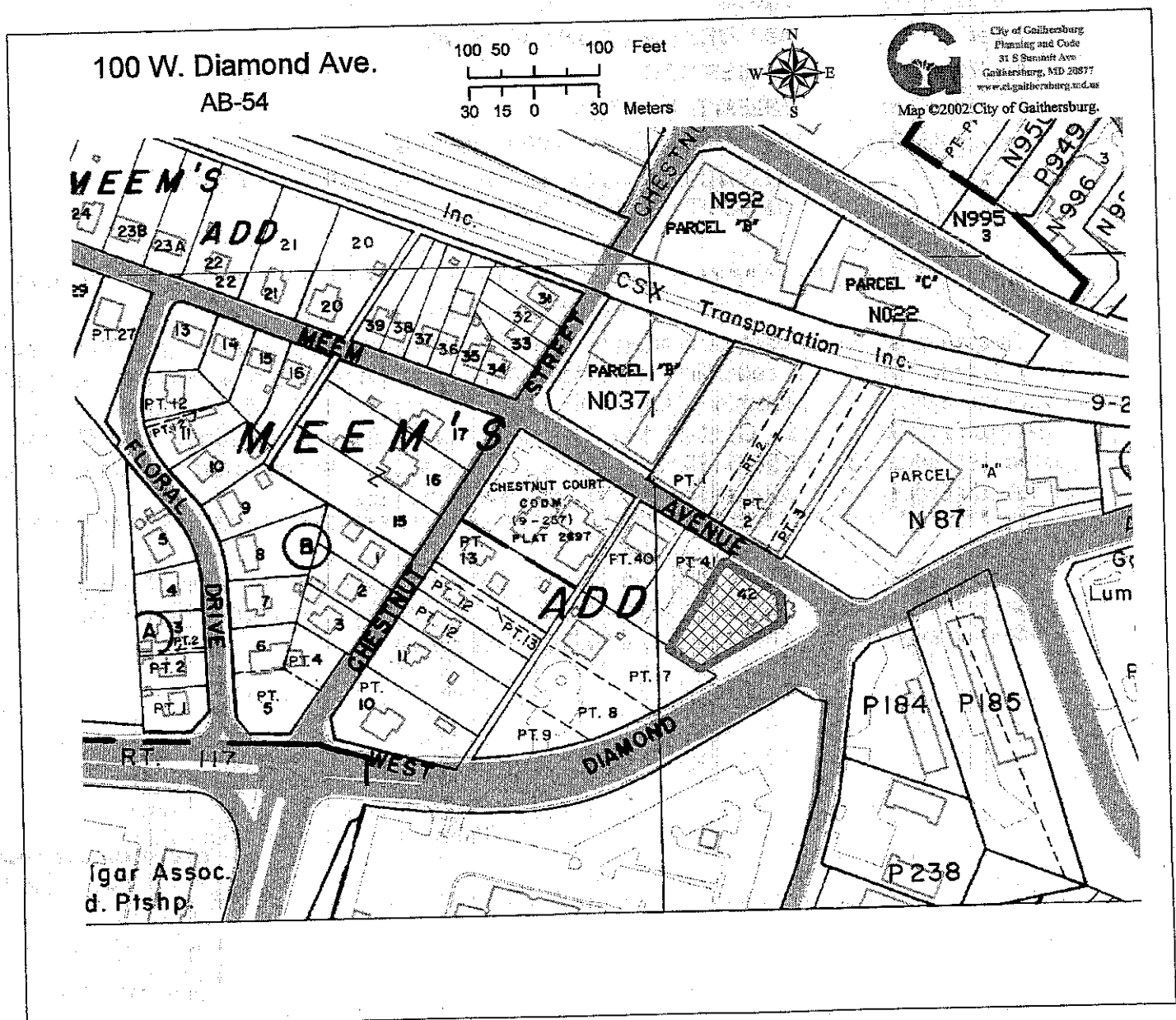
MAYOR AND COUNCIL

PLANNING COMMISSION

CITY STAFF

David B. Humpton, City Manager
Frederick J. Felton, Assistant City Manager
Tony Tomasello, Assistant City Manager
Stanley D. Abrams, City Attorney
Mary Beth Smith, Public Information Director
Doris Stokes, Administrative Assistant
Jeff Baldwin, City Web Administrator (via email)

LOCATION MAP



INDEX OF MEMORANDUM
AB-54

No.

- 1) Application for AB-54
- 2) Receipt of Application Fee for AB-54
- 3) Metes and Bounds Description of Abandonment Area
- 4) Sketch of abandonment request
- 5) Plat of Lot 42, Meem's Addition to Gaithersburg
- 6) Letter, dated December 6, 2001, from Richard Ravenscroft, State Highway Administration
- 7) Letter, dated March 11, 2002, from James Clifford, Esq.
- 8) Letter, dated March 15, 2002, from Richard Ravenscroft, SHA
- 9) Ordinance of Abandonment AB-54
- 10) Mayor and City Council Cover Sheet for June 17, 2002 meeting
- 11) Staff Analysis AB-54
- 12) Notice of Public Hearing as sent June 14, 2002
- 13) List of Notification addresses
- 14) Letter requesting publication of Notice of Public Hearing in the June 18, 2002 issue of the *Gaithersburg Gazette*
- 15) Area of abandonment
- 16) 2001 Aerial photograph of the property
- 17) Survey of abandonment (Exhibit #4)
- 18) Photo, View of property from the east, intersection of Meem and West Diamond Avenues
- 19) Photo, View of property from the south, West Diamond Avenue
- 20) Photo, View of property from the north, Meem Avenue
- 21) Photo, area of the subject abandonment request
- 22) CPC dated June 20, 2002
- 23) Certified copy of the Notice of Public Hearing as it appeared in the June 19, 2002 issue of the *Gaithersburg Gazette*

ABANDONMENT OF PUBLIC RIGHTS-OF-WAY AND EASEMENTS

In accordance with Chapter 19, Article III,
Section 19-18 thru 27 of the City Code

Application Number	<u>AB-54</u>
Filing Date	<u>Aug 22, 2001</u>
Fee Paid	<u>\$230.00</u>
Legal Ad	<u>6/19/02</u>
P.C. Review	<u>6/19/02</u>
M&C Review	<u>7/01/02</u>
Decision	_____
Date of Decision	_____
Effective Date	_____

Lot 42, "MEEM'S ADDITION
SUBJECT PROPERTY TO GAITHERSBURG" TAX ACCOUNT NO. 9-211-2878978
LOCATION 100 West Diamond Avenue, Gaithersburg, Maryland 20877

ABANDONMENT OF

☒ DEDICATED STREET ☐ ALLEY ☐ UTILITY ☒ EASEMENT ☐ OTHER _____

WIDTH _____ FEET LENGTH _____ FEET TOTAL SQ. FT./ACREAGE 403 sq.ft

REASON FOR REQUEST TO ABANDON The existing 10' P.U.E. and P.I.E. and the existing dedication for Meem Avenue and West Diamond Avenue interferes with the full use of the existing brick and frame structure located on said Lot 42.

APPLICANTS

1. NAME James Y. Kao TELEPHONE (301) 299-5536

ADDRESS 11156 Powder Horn Drive, Potomac, Maryland 20854

LOT 9 BLOCK B SUBDIVISION WILLOWBROOK TAX ACCOUNT NO. 10-00890478

2. NAME Wen- Min C. Kao TELEPHONE (301) 299-5536

ADDRESS 11156 Powder Horn Drive, Potomac, MD 20854

LOT 9 BLOCK B SUBDIVISION WILLOWBROOK TAX ACCOUNT NO. 10-00890478

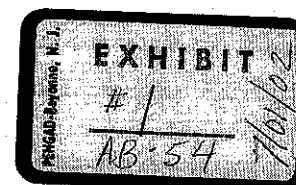
3. NAME _____ TELEPHONE _____

ADDRESS _____

LOT _____ BLOCK _____ SUBDIVISION _____ TAX ACCOUNT NO. _____

SUBMISSION REQUIREMENTS

- ☐ Survey with vicinity map.
- ☐ Metes and bounds description.
- ☐ Written consent of owner if applicable.
- ☐ Required fee (fee schedule available at the Planning Department).
- ☐ Record plat (if required).



continued on reverse side

ADJACENT PROPERTY OWNERS OF SUBJECT AREA

THOMAS F. MASCARI

ROBERT W. MASCARI

1. NAME MAGGOTRICE PARTNERS

ADDRESS 5 Meen Avenue
Gaithersburg, MD 20877-2117

TAX ACCOUNT NO. _____

3. NAME _____

ADDRESS _____

TAX ACCOUNT NO. _____

5. NAME _____

ADDRESS _____

TAX ACCOUNT NO. _____

2. NAME CITY OF GAITHERSBURG

ADDRESS 31 South Summit Avenue
Gaithersburg, MD 20877

TAX ACCOUNT NO. _____

4. NAME _____

ADDRESS _____

TAX ACCOUNT NO. _____

6. NAME _____

ADDRESS _____

TAX ACCOUNT NO. _____

If the right-of-way provides the only access to a property, the applicant shall provide written consent of that property owner along with his name and address specifically identified here:

NAME N/A

ADDRESS _____

SIGNATURES OF SPONSORING APPLICANTS

1. Signature

Jen-z. Kao

Date

8/10/2001

2. Signature

Wen-mau C. Kao

Date

8/10/2001

3. Signature _____

Date _____

Metes and Bounds Description
Of
Part of Meem Avenue
City of Gaithersburg
Election District No. 9
Montgomery County, Maryland

July 3, 2001

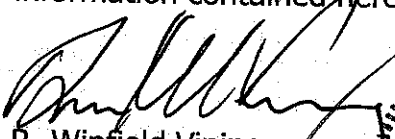
Being a piece or parcel of land lying and situate in the City of Gaithersburg, Ninth Election District, Montgomery County, Maryland, being a part of Meem Avenue, as dedicated to public use on a plat of subdivision entitled "LOT 42, MEEM'S ADDITION TO GAITHERSBURG" and recorded in the land records of Montgomery County, Maryland in Plat Book 157 at Plat No. 17870, said piece or parcel of land being more particularly described as follows:

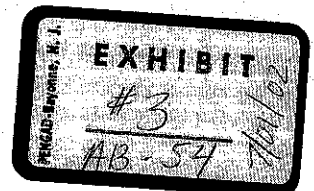
Beginning at a point lying on the southwesterly right-of-way line of said Meem Avenue, said point lying at the at the beginning of the South $02^{\circ} 44' 16''$ West 43.10 foot line of Lot 42 of said Plat No. 17870; thence with the southeasterly extension of said right-of-way line

1. South $56^{\circ} 48' 33''$ East, 12.76 feet; thence leaving said extension and parallel with said 43.10 foot line
2. South $02^{\circ} 44' 16''$ West 30.17 feet; thence
3. South $52^{\circ} 17' 06''$ West, 12.76 feet to a point on the northwesterly right-of-way line of West Diamond Avenue as shown on aforesaid Plat No. 17870, said point lying at the end of aforesaid 43.10 foot line; thence reversely with said line
4. North $02^{\circ} 44' 16''$ East, 43.10 feet to the point of beginning,

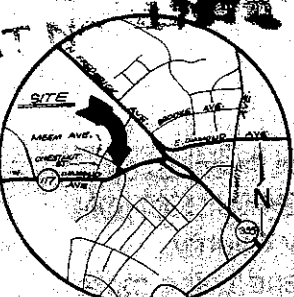
Containing 403 square feet or 0.0093 acres of land.

I hereby certify that this legal description and accompanying plat were prepared in conjunction with a survey performed under my direct supervision, and that the information contained herein is correct, to the best of my professional ability.

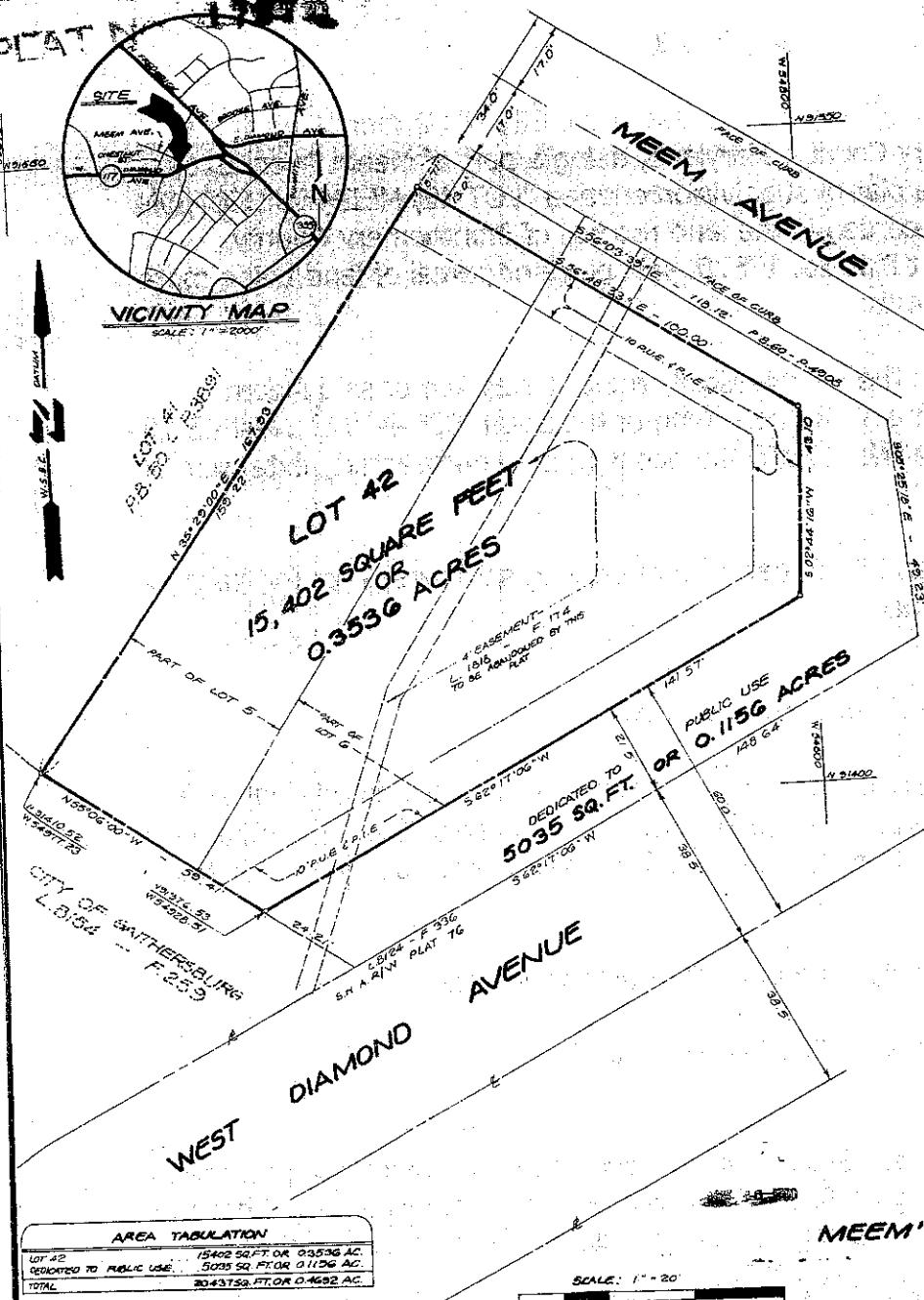

R. Winfield Vining
Professional Land Surveyor
MD Reg. No. 10957



PLAT NO. 1184



VICINITY MAP
SCALE: 1" = 2000'



SURVEYOR'S CERTIFICATE

I HEREBY CERTIFY THAT THE PLAN SHOWN HEREON HAS BEEN PREPARED IN A PROFESSIONAL MANNER THAT IT IS A RESUBDIVISION OF PART OF LOTS 5 AND 6 IN MEEM'S ADDITION TO GAITHERSBURG, RECORDED IN PLAT BOOK 5, PLAT 233, AMONG THE LAND RECORDS FOR MONTGOMERY COUNTY, MARYLAND, ALSO BEING PART OF THE LAND CONVEYED FROM JAMES T. KAG AND KEN-AN C. KAG TO STEPHEN S. TENNANT BY DEED DATED 25 MAY 1989 AND RECORDED IN LIGER 1728 FOLIO 232. THE TOTAL AREA OF THE LAND INCLUDED WITHIN THIS PLAN OF SUBDIVISION IS 50,437 SQUARE FEET OR 0.4632 ACRES, OF WHICH 15,402 SQUARE FEET OR 0.3536 ACRES ARE DEDICATED TO PUBLIC USE, SUBJECT TO COVENANTS, EASEMENTS, RESTRICTIONS AND CONDITIONS OF RECORD.

DATE: 10-10-1989
ERIC V. DAVIS
PROFESSIONAL LAND SURVEYOR
MARYLAND REGISTRATION NUMBER: 10771

OWNERS' DEDICATION

I, THE UNDERSIGNED, OWNER OF THE EASEMENT SHOWN AND DESCRIBED HEREON, HEREBY ADOPT THIS PLAN OF SUBDIVISION, ESTABLISH THE MINIMUM BUILDING RESTRICTIONS LINES AND DEDICATE THE STREETS TO PUBLIC USE AS SHOWN HEREON.
FURTHER, I GRANT TO POTOMAC ELECTRIC POWER COMPANY, CHESAPEAKE AND POTOMAC TELEPHONE COMPANY AND THE MONTGOMERY GAS LIGHT AND POWER COMPANY, NATURAL GAS DISTRIBUTION EASEMENT AS SHOWN HEREON, (P.U.E.) IN ACCORD WITH THE DECLARATION OF TERMS AND PROVISIONS OF PUBLIC UTILITIES EASEMENTS RECORDED IN LIGER 3084 AT PLAT 1027 AMONG THE LAND RECORDS FOR MONTGOMERY COUNTY, MARYLAND.
FURTHER, I GRANT TO THE CITY OF GAITHERSBURG, MARYLAND, ITS SUCCESSORS, AGENTS AND ASSIGNS, A PUBLIC IMPROVEMENTS EASEMENT AS SHOWN HEREON, (P.U.E.) IN ACCORD WITH TERMS AND PROVISIONS OF THAT CERTAIN DOCUMENT ENTITLED "DECLARATION OF EASEMENTS" RECORDED IN LIGER 9170 FOLIO 237 AMONG THE MONTGOMERY COUNTY LAND RECORDS OF MONTGOMERY COUNTY, MARYLAND.
THERE ARE NO EASEMENTS, EIGHTH L.A.'S, MORTGAGES, LIENS OR TRUSTS ON THE PROPERTY INCLUDED IN THIS PLAN OF SUBDIVISION EXCEPT A CERTAIN MORTGAGE AND ALL PARTIES INTERESTED THEREIN HAVE INDICATED THEIR ASSENT BY AFFIXING THEIR SIGNATURES HEREON.

ATTEST: *[Signature]* DATE: *[Signature]* STEPHEN S. TENNANT
I HEREBY ASSENT TO THIS PLAN OF SUBDIVISION.
[Signature] DATE: *[Signature]* JAMES T. KAG

NOTE:

1. THE APPROVAL OF THIS PLAN IS PREDICATED ON THE AVAILABILITY AND ADEQUACY OF PUBLIC WATER AND SEWER.
2. THE ZONING DESIGNATION FOR THIS LAND IS R9; EXISTING USE IS CON- YREAR.
3. SUBJECT TO THE FOLLOWSING RECORDED EASEMENTS AND RIGHTS-OF-WAYS:
CHESAPEAKE AND POTOMAC TELEPHONE COMPANY LIGER 206 FOLIO 217
CHESAPEAKE AND POTOMAC TELEPHONE COMPANY LIGER 218 FOLIO 220
CHESAPEAKE AND POTOMAC TELEPHONE COMPANY LIGER 1728 FOLIO 232
CITY OF GAITHERSBURG LIGER 1016 FOLIO 171
TOWN OF GAITHERSBURG LIGER 1720 FOLIO 418
MONTGOMERY COUNTY LIGER 8124 FOLIO 335

AREA TABULATION	
LOT 42	15402 SQ. FT. OR 0.3536 AC.
DEDICATED TO PUBLIC USE	5035 SQ. FT. OR 0.1156 AC.
TOTAL	20437 SQ. FT. OR 0.4632 AC.

FOR PUBLIC WATER AND SEWER SYSTEMS ONLY

GAITHERSBURG CITY PLANNING COMMISSION

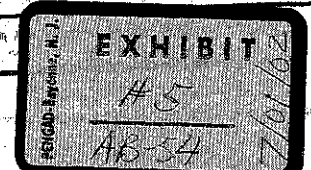
APPROVED: MAY 2, 1990
[Signature] CHAIRMAN
[Signature] SECRETARY

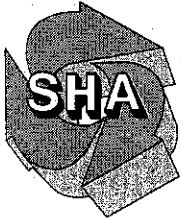
RECORDED _____
PLAT BOOK _____
PLAT NO. _____

PLAT OF SUBDIVISION
LOT 42
MEEM'S ADDITION TO GAITHERSBURG

SECTION DISTRICT 9
CITY OF GAITHERSBURG
MONTGOMERY COUNTY, MARYLAND
SCALE: 1" = 20' DATE: OCTOBER 1989

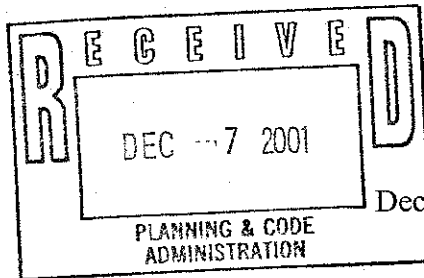
DEWBERRY & DAVIS
ARCHITECTS - ENGINEERS - PLANNERS - SURVEYORS
804 WEST DIAMOND AVENUE
GAITHERSBURG, MARYLAND 20878
TEL. (301) 948-8300





**Maryland Department of Transportation
State Highway Administration**

Office of District Engineer
State Highway Administration
9300 Kenilworth Avenue
Greenbelt, Maryland 20770



December 6, 2001

Parris N. Glendening
Governor

John D. Porcari
Secretary

Parker F. Williams
Administrator

Mrs. Trudy Schwarz, Planner
City of Gaithersburg
31 South summit Avenue
Gaithersburg, MD 20877

Dear Mrs. Schwartz:

Thanks for your inquiry concerning abandonment of the dedication of right of way on the Kao property located at 100 Meem Avenue in Gaithersburg. I discussed this situation with Charlie K. Watkins, District Engineer and we determined that we could agree to the abandonment under certain conditions.

The conditions we propose are:

1. Dedication to at least the extent of the current dedication will be required if the property is redeveloped in the future.
2. After abandonment, the present dedicated land will be donated free of charge to the State, if and when it is needed for a future project.
3. If the State needs to remove the present building for a project, the State will pay for the building.
4. The State will not be obligated to pay damages if the building is taken or if land is taken in the future.
5. The conditions stated in paragraph 2,3 & 4 above are in effect only as long as the property remains in the same state of development as it is on the day of abandonment, if the property is redeveloped then paragraph 1. Governs.

Thanks again for the opportunity to comment.

Sincerely,

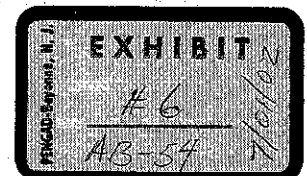

Richard Ravenscroft, chief
R/W District No. 3

CC: Charlie K. Watkins

Greg Cooke My telephone number is 1-800-749-0737

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

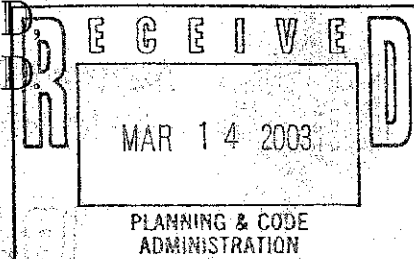


CLIFFORD, DEBELIUS, CRAWFORD
BONIFANT & FITZPATRICK, CHTD.

ATTORNEYS AT LAW
Olde Towne Professional Park
320 East Diamond Avenue
Gaithersburg, Maryland 20877-3016

(301) 840-2232

fax (301) 975-9829



John W. Debelius (1926-1984)

James R. Clifford, Sr. (MD, VA)
James J. Debelius (MD)
Gary L. Crawford (MD, DC)
James A. Bonifant (MD)
E. Joseph Fitzpatrick, Jr. (MD, DC, TN)

March 11, 2002

Richard Ravenscroft, Chief
Maryland Department of Transportation
State Highway Administration
Office of District Engineer
9300 Kenilworth Avenue
Greenbelt, MD 20770

Re: Abandonment of 100 Meem Avenue,
Gaithersburg, Maryland

Dear Mr. Ravenscroft:

I have received a copy of your letter to Trudy Schwarz, Planner for the City of Gaithersburg, dated December 6, 2001. Upon a review of the letter, I am unclear as to whether or not there is a conflict between items 3 and 4. I am enclosing a copy of the letter for your reference. I would appreciate a letter of explanation or a telephone call, if that is better for you, to explain how these to items relate.

Thank you. I look forward to hearing from you.

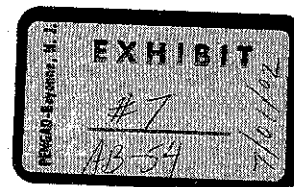
Sincerely,

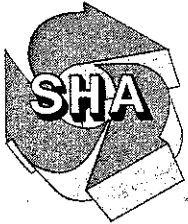
CLIFFORD, DEBELIUS, CRAWFORD,
BONIFANT & FITZPATRICK, CHTD.


JAMES R. CLIFFORD, SR., ESQ.

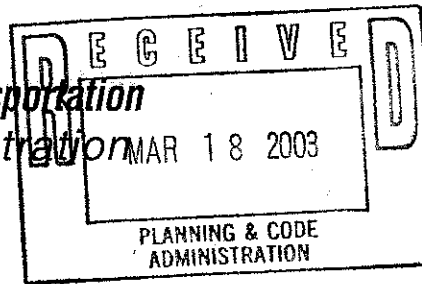
JRC/dlh
enclosure

cc: Trudy Schwarz
G:\DATA\DCD\REALEST\Kao\DOT 3 11 02.wpd





Maryland Department of Transportation
State Highway Administration



Parris N. Glendening
Governor
John D. Porcari
Secretary
Parker F. Williams
Administrator

Office of District Engineer
State Highway Administration
9300 Kenilworth Avenue
Greenbelt, Maryland 20770

March 15, 2002

James R. Clifford, Sr., Esq.
Clifford, Debelius, Crawford,
Bonifant & Fitzpatrick, Chtd.
320 East Diamond Avenue
Gaithersburg, MD 20877-3016


Dear Mr. Clifford:

Thank you for your letter concerning the Kao property at 100 Meem Avenue, Gaithersburg. I will try to clarify my comments in the December 6, 2001 letter to Trudy Schwarz.

I assume that you have no objection to the text in condition number 3. Condition number 4, is intended to prevent the owner from claiming severance damages to the remaining property in the event that the building and/ or land is acquired. It is conceivable that a future taking could be held to damage the remaining property by reducing the area to where certain uses are not possible. The size of a replacement commercial building is a function of the size of the lot, parking and building setbacks figure in these calculations. There is also no guarantee that a replacement building could be built after a future taking.

The underlying philosophy guiding my thoughts is that the State should not be penalized in any way by being cooperative. I trust this explanation is satisfactory.

Sincerely,

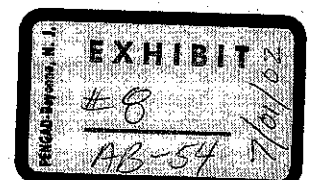

Richard Ravenscroft, Chief
Right of Way District No. 3

CC: Charlie K. Watkins
Gregg Cooke
Trudy Schwarz ✓

My telephone number is 1-800-749-0737

Maryland Relay Service for Impaired Hearing or Speech
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202



ORDINANCE NO. _____

AN ORDINANCE TO CONDITIONALLY ABANDON 0.0093 ACRES OR 403 SQUARE FEET OF LAND DEDICATED FOR THE RIGHT-OF-WAY FOR MEEM AND WEST DIAMOND AVENUES, SITUATED IN THE SUBDIVISION KNOWN AS MEEM'S ADDITION TO GAITHERSBURG, IN THE CITY OF GAITHERSBURG, MONTGOMERY COUNTY, MARYLAND

ABANDONMENT AB-54

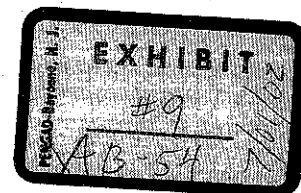
WHEREAS, the applicants, James Y. and Wen-Min C. Kao; as proper parties to initiate this abandonment, applied pursuant to Article III of Chapter 19 of the City of Gaithersburg Code for the abandonment of a portion of property dedicated to public use as recorded in Plat Book 157 at Plat No. 17870, and dedicated by plat of subdivision known as "Lot 42, Meem's Addition to Gaithersburg"; recorded among the Montgomery County Land Records; and

WHEREAS, the area of abandonment includes a portion of land in the Ninth (9th) Election District of Montgomery County, Maryland and being a part of Meem Avenue, as dedicated to public use on a plat of subdivision entitled "LOT 42, MEEM'S ADDITION TO GAITHERSBURG" and recorded in the Land Records of Montgomery County, Maryland in Plat Book 157 at Plat No. 17870 and a shown in "Exhibit A", attached hereto and being, said piece or parcel of land being more particularly described as follows in Washington Suburban Sanitary Commission Datum by Winfield Vinning, Jr., PLS.:

Beginning at a point lying on the southwesterly right-of-way line of said Meem Avenue, said point lying at the at the beginning of the South 02° 44' 16" West 43.10 foot line of Lot 42 of said Plat No. 17870; thence with the southeasterly extension of said right-of-way line

1. South 56° 48' 33" East, 12.76 feet; thence leaving said extension and parallel with said 43.10 foot line
2. South 02° 44' 16" West 30.17 feet; thence
3. South 52° 17' 06" West, 12.76 feet to a point on the northwesterly right-of-way line of West Diamond Avenue as shown on aforesaid Plat No. 17870, said point lying at the end of aforesaid 43.10 foot line; thence reversely with said line
4. North 02° 44' 16" East, 43.10 feet to the point of beginning,

Containing 403 square feet or 0.0093 acres of land (hereinafter, "The Property").



WHEREAS, the computed area of the right-of-way to be abandoned is approximately 403 square feet or 0.00093 acres; and

WHEREAS, the Mayor and City Council finds that the existing right-of-way is no longer necessary for present vehicular, pedestrian, or other right-of-way use by the general public, and does not provide the sole means of ingress and egress to any property; and

WHEREAS, the Mayor and City Council finds that there are no existing easements necessary for present use; and

WHEREAS, the Mayor and City Council finds that in accordance with the position of the Maryland State Highway Administration, that dedication at least to the extent of the current dedication will be required if the property is redeveloped in the future; and

WHEREAS, the Mayor and City Council finds the owners agree to donate free of charge the present dedicated land to the Maryland State Highway Administration, if and when it is needed for a future public project, or improvements; and

WHEREAS, a duly advertised public hearing on said application was held by the Mayor and City Council, and the City Planning Commission have submitted a recommendation supporting the abandonment to the Mayor and City Council; and

WHEREAS, the Mayor and City Council have received comments concerning the abandonment request in a letter dated December 6, 2001 from Maryland State Highway Administration; and

WHEREAS, the Mayor and City Council have received no request for further hearings on this matter, and there have been no objections to the abandonment; and

WHEREAS, the Mayor and City Council have concluded that no further hearings are necessary to resolve this matter:

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of Gaithersburg, Maryland, in a public meeting assembled, finds that the above described area dedicated to public right-of-way use containing 0.0093 acres or 403 square feet of land is no longer necessary for present public use for right-of-way purposes, that the area does not provide the sole means of ingress/easement to any property and hereby declares said property to be abandoned, vacated and released subject to the following condition:

(1) The applicants, applicants' successors or assigns shall rededicate to public use to the extent of the current dedication if the applicants' property is redeveloped in the future or if the State of Maryland requires the property for future right-of-way improvements.

ADOPTED this _____ day of _____, 2002, by the City Council of Gaithersburg, Maryland.

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this _____ day of _____, 2002. APPROVED/VETOED by the Mayor of the City Council of Gaithersburg, this _____ day of _____, 2002.

SIDNEY A. KATZ

Mayor and President of the City Council

THIS IS TO CERTIFY that the foregoing Ordinance was adopted by the City Council of the City of Gaithersburg, in public meeting assembled, on the _____ day of _____, 2002, and the same was (Approved/Vetoed) by the Mayor on the _____ day of _____, 2002.

This Ordinance will become effective on the _____ day of _____, 2002.

David B. Humpton, City Manager

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

June 17, 2002

RESPONSIBLE STAFF:

Trudy Schwarz, Senior Planner

TITLE:

Introduction of Ordinance, Abandonment Application AB-54, An Ordinance to Conditionally Abandon 0.0093 Acres or 403 sq. ft. of Land Dedicated for Right of Way for Meem and West Diamond Avenues, situated in the subdivision known as Meem's Addition, in the City of Gaithersburg, Montgomery County, Maryland

AGENDA ITEM:

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input checked="" type="checkbox"/>	Other:

SUPPORTING BACKGROUND:

Attached is the proposed ordinance to conditionally abandon this small portion of right-of-way at the intersection of Meem and West Diamond Avenues. In 1990 this area was dedicated as part of an office development proposal on the property, which called for demolition of the existing house. See Exhibits #4 and #5. The development was never built nor was the house demolished. This has created a cloud on the title of the property because a portion of the house is in the right of way. The owner and his representative have been working with City staff and the State of Maryland to resolve this issue by conditionally abandoning a portion of the right of way until there is further development on the property.

The public hearing for this abandonment will be scheduled for the Mayor and City Council Meeting on July 1, 2002.

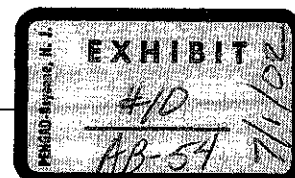
PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	06/17/02
Advertised	
Hearing Held	
Record Held Open	
Policy Discussion	

DESIRED OUTCOME:

Introduce the Ordinance



COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Planning Commission

FROM: Trudy M.W. Schwarz, Senior Planner

DATE: June 14, 2002

SUBJECT: AB-54 --The application requests abandonment of approximately 0.093 acres or 403 square feet of land dedicated for right-of-way for Meem and West Diamond Avenues at 100 West Diamond Avenue, Lot 42, Meem's Addition, Gaithersburg, Maryland.

APPLICANT:

James Y. and Wen-Min C. Kao

REQUEST:

The application requests abandonment of approximately 0.093 Acres or 403 sq. of land dedicated for right-of-way for Meem and West Diamond Avenues at 100 West Diamond Avenue, Lot 42, Meem's Addition, Gaithersburg, Maryland.

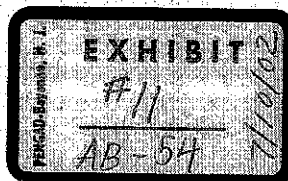
LOCATION:

The subject right of way is located at the northwest quadrant of the intersection of Meem and West Diamond Avenues (MD RT 117).

BACKGROUND:

This subject property was part of the subdivision of Meem's Addition to Gaithersburg. The subdivision plat was recorded in 1896. These properties were single family lots. The 1958 and 1965 Zoning Maps record this property in the R-90 Zone. The 1970 Master Plan shows the property zoned R-T (the City's first townhouse zone). In the late 1970's all R-T properties were converted to the RP-T Zone. In 1980 the City approved a petition of Mr. Kao's to rezone the property from the RP-T Zone to the R-O (Planned Residential) Zone. (Although this zone is titled residential, it allowed professional offices.) As a part of the comprehensive rezoning of Neighborhood 2 following the master planning process, this property was rezoned to the R-B (Residential Buffer) Zone in 1985.

In 1989, a contract purchaser for the property received final site plan approval from the Planning Commission for a 2-story, 7200 square foot office building. The plan called for the demolition of the existing house on the lot. As a part of the site plan process a final subdivision (record) plat was approved with right of way dedication for both Meem and West Diamond Avenues. The plan received an extension of the approval in 1990 and 1991. Following those extensions the site plan approval expired.



The property reverted back to Mr. and Mrs. Kao. The house and property has been utilized either as a residence or as an office for the past twenty years.

The development proposal of 1989 was never built nor was the house demolished. This has created a cloud on the title of the property because a portion of the house is in the right of way. The owner and his representative have been working with City staff and the State of Maryland to resolve this issue by conditionally abandoning a portion of the right of way until there is further development on the property.

The public hearing before the Mayor and Council has been scheduled for July 1, 2002. The property was posted on June 14, 2002 and will be advertised in the *Gaithersburg Gazette* on June 19, 2002. In addition, the required property owners and interested agencies were notified on June 14, 2002.

ADJACENT LAND USE AND ZONING:

North: Located across Meem Avenue is Uncle Bob's Self Storage which is in the I-1 (Light Industrial) Zone.

East: Across West Diamond Avenue (MD RT 117) are apartments in the R-20 (Medium Density Zone) and the Gaithersburg Washington Suburban Sanitary Commission (WSSC) facility in both the RP-T and R-A Zones.

South: The City's Water Tank Park, which has a day care facility. This property is in the R-A Zone.

West: Offices in former residential buildings which are zoned R-B.

STAFF ANALYSIS:

Chapter 19 of the City Code, Streets and Sidewalks, sets forth procedures for abandonment of public rights-of-way (and easements) in Article III. The Planning Commission is required to make a recommendation to the City Council prior to their public hearing.

The City Council may abandon the right-of-way/easement if it shall find from the evidence of record that the right-of-way/easement is no longer necessary for present or anticipated future public use. No right-of-way/easement which provides the sole means of ingress and egress to any property may be abandoned by action of the council without the written consent of the owner of such property.

City Staff has been working with the applicant and the Maryland State Highway Administration concerning this application because of the complexities of this property and the location of the house. SHA has agreed to the abandonment with conditions (See Exhibit #6).

Staff has not received any comments from the utilities concerning this abandonment. There are existing utilities that were in place prior to the recordation of the plat in 1980 and not in the area of the abandonment request. The Department of Public Works, Park Maintenance and Engineering (DPWPM&E) reviewed this abandonment request in relationship to the Meem Avenue project and are of the opinion that this abandonment will not effect this project.

STAFF RECOMMENDATION:

Staff recommends Mayor and City Council hold the record open for 10 days (July 10, 2002.) This would be scheduled for Policy Discussion/Adoption at the July 15, 2002, Mayor and Council Meeting.

In accordance with the request of SHA, approval of this abandonment should be conditioned with the following:

1. The applicants, applicants' successors or assigns shall rededicate to public use to the extent of the current dedication if the applicants' property is redeveloped in the future or if the State of Maryland requires the property for future right-of-way improvements.

AB54
ROBERT E RICHARDS TRUST
% GEORGE B LANE JR
6816 NEWBOLD DR
BETHESDA MD 20817

AB54
VICTOR J PEEKE
16013 COMUS RD
CLARKSBURG MD 20871

AB54
B&L LMTD PTNSHP
101 CHESTNUT ST STE 125
GAITHERSBURG MD 20877

AB54
WEIPO INVESTMENT, LLC
101 CHESTNUT ST # 4A
GAITHERSBURG MD 20877

AB54
BERNARD G & M J LAFRANCE
105 CHESTNUT ST
GAITHERSBURG MD 20877

AB54
ANDREW & RUTH S FROST
107 CHESTNUT ST
GAITHERSBURG MD 20877

AB54
SOVRAN ACQUISITION L P
6467 MAIN ST
BUFFALO NY 14221

AB54
LEE J & M A WELLS
11505 PLEASANT MEADOW DR
NORTH POTOMAC MD 20878

AB54
JAMES Y & WEN-MIN C KAO
11156 POWDER HORN DR
POTOMAC MD 20854

AB54
GENERAL LEASING SVCS INC
4901 WATERFOWL WAY
ROCKVILLE MD 20853

AB54
THOMAS F MASCARI
5 MEEM AVE
GAITHERSBURG MD 20877

AB54
JAMES SHABELSKI
WSSC
14501 SWITZER LN
LAUREL MD 20705

AB54
HERBERT H GREGER TRUST
TRUST DEPT 1ST NATL BANK OF MD
P O BOX 1596
BALTIMORE MD 21203

AB54
CURRENT RESIDENT
100 W DIAMOND AVE
GAITHERSBURG MD 20877

AB54
JAMES CLIFFORD SR ESQ
320 E DIAMOND AVE
GAITHERSBURG MD 20877-3016

AB54
STEVEN BAXTER
PEPCO
4061 POWDER MILL RD #600
CALVERTON MD 20705

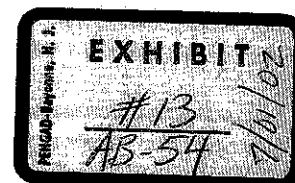
AB54
HJ PULIZZI
PEPCO
1900 PENNSYLVANIA AVE NW
WASHINGTON DC 20068

AB54
GABOR VARZA
VERIZON
3901 CALVERTON BLVD FL 3
BELTSVILLE MD 20705

AB54
GEORGE ELLIS
WASHINGTON GAS
6801 INDUSTRIAL RD
SPRINGFIELD VA 22151

AB54
BARBARA BARRY
WASHINGTON GAS
6801 INDUSTRIAL RD
SPRINGFIELD VA 22151

AB54
STANDARD SUPPLIES INC
4 MEEM AVE
GAITHERSBURG MD 20877





June 18, 2002

Ms. Bonnie Geiger
Law Section
The Gaithersburg Gazette
P.O. Box 6006
Gaithersburg, MD 20884

Dear Bonnie:

Please publish the following legal advertisement in your newspaper issue of **June 19, 2002**.

Sincerely,

Trudy M.W. Schwarz
Trudy M.W. Schwarz
Senior Planner

ASSIGN CODE: PHAB-54/Acc.#133649

NOTICE OF PUBLIC HEARING

The Mayor and City Council of the City of Gaithersburg will hold a public hearing on Abandonment AB-54, filed by James and Wen-Min Kao, on

MONDAY
JULY 1, 2002
AT 7:30 P.M.

or as soon thereafter as it may be heard in the Council Chambers at City Hall, 31 South Summit Avenue, Gaithersburg, Maryland.

The application requests abandonment of approximately 0.093 Acres or 403 sq. feet of land dedicated for right-of-way for Meem and West Diamond Avenues at 100 West Diamond Avenue, Lot 42, Meem's Addition, Gaithersburg, Maryland.

Further information may be obtained from the Department of Planning and Code Administration at City Hall, 31 South Summit Avenue, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday.

Trudy M. W. Schwarz
Senior Planner



City of Gaithersburg • 31 South Summit Avenue, Gaithersburg, Maryland 20877-2098
301-258-6300 • FAX 301-948-6149 • TTY 301-258-6430 • cityhall@ci.gaithersburg.md.us • www.ci.gaithersburg.md.us

MAYOR
Sidney A. Katz

COUNCIL MEMBERS
Stanley J. Alster
Geraldine E. Edens
Henry F. Marraffa, Jr.
John B. Schlichting
Ann T. Somerset

CITY MANAGER
David B. Humpton

MODE = MEMORY TRANSMISSION

START=JUN-18 06:46

END=JUN-18 06:47

FILE NO.=953

STN NO.	COMM.	ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	<08>	GAZETTE LE	002/002	00:00:40

-THE CITY OF GAITHERSBURG -

***** -PLAN AND CODE - ***** 3012586336- *****



Gaithersburg

A CHARACTER COUNTS! CITY

FAX TRANSMITTAL FORM

SEND TO: BONNIE GEIGER - LAW SECTION

GAITHERSBURG GAZETTE

FAX NO.: 301-670-7136

FROM: Trudy Schwarz

PLANNING AND CODE ADMINISTRATION

FAX NO.: 301-258-6336

TELEPHONE NO.: 301-258-6330

DATE: June 18, 2002 TIME: 6:45 AM

NO. OF PAGES ATTACHED: 1

MESSAGE: PLEASE PUBLISH THE ATTACHED NOTICE OF PUBLIC HEARING
IN THE JUNE 19, 2002 ISSUE OF THE GAITHERSBURG GAZETTE.

THANKS,
Trudy

**IF YOU EXPERIENCE DIFFICULTY IN RECEIVING THIS TRANSMISSION,
PLEASE CALL 301-258-6330**

City of Gaithersburg ' 31 South Summit Avenue ' Gaithersburg, MD 20877-2098
plancode@ci.gaithersburg.md.us www.ci.gaithersburg.md.us

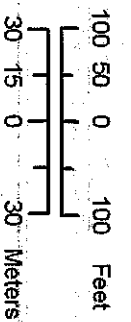
MAYOR
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CITY MANAGER
David B. Humpton

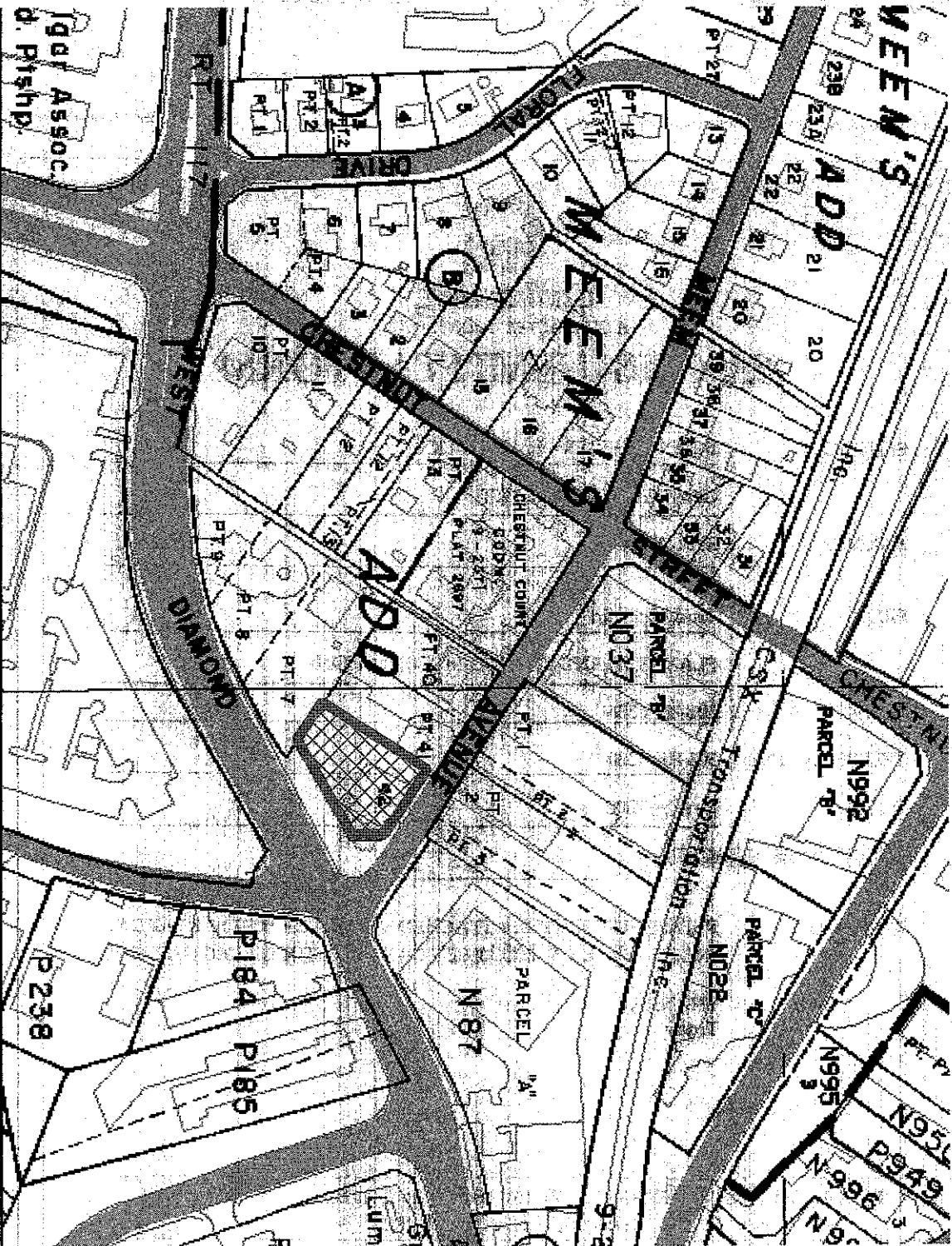
100 W. Diamond Ave.

AB-54



City of Gaithersburg
Planning and Code
31 S Summit Ave
Gaithersburg, MD 20878
www.ci.gaithersburg.md.us

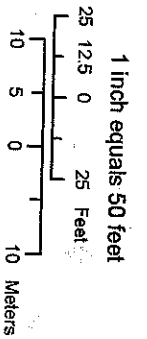
Map ©2002 City of Gaithersburg



PENGAD-Boyona, R. J.

EXHIBIT
#15
AB-54
7/6/02

Project Name: msl - 27-Dec-2001 - jke



MD State Plane
HPGN NAD 83/91

Aerial Photo ©2001 VARGIS, L.L.C. Herndon VA. All rights reserved.
Property boundaries ©2001 M-ACPPC and City of Gaithersburg.
Aerial photo acquired March-April 2000.

The City of Gaithersburg makes no warranty, express or implied, for the completeness and accuracy of the information depicted on this map. This map may not be reproduced, in whole or in part, without the express written permission of the City of Gaithersburg and other referenced parties.

City of Gaithersburg
Planning and Code
Department
Gaithersburg, MD 20878
www.ci.gaithersburg.md.us

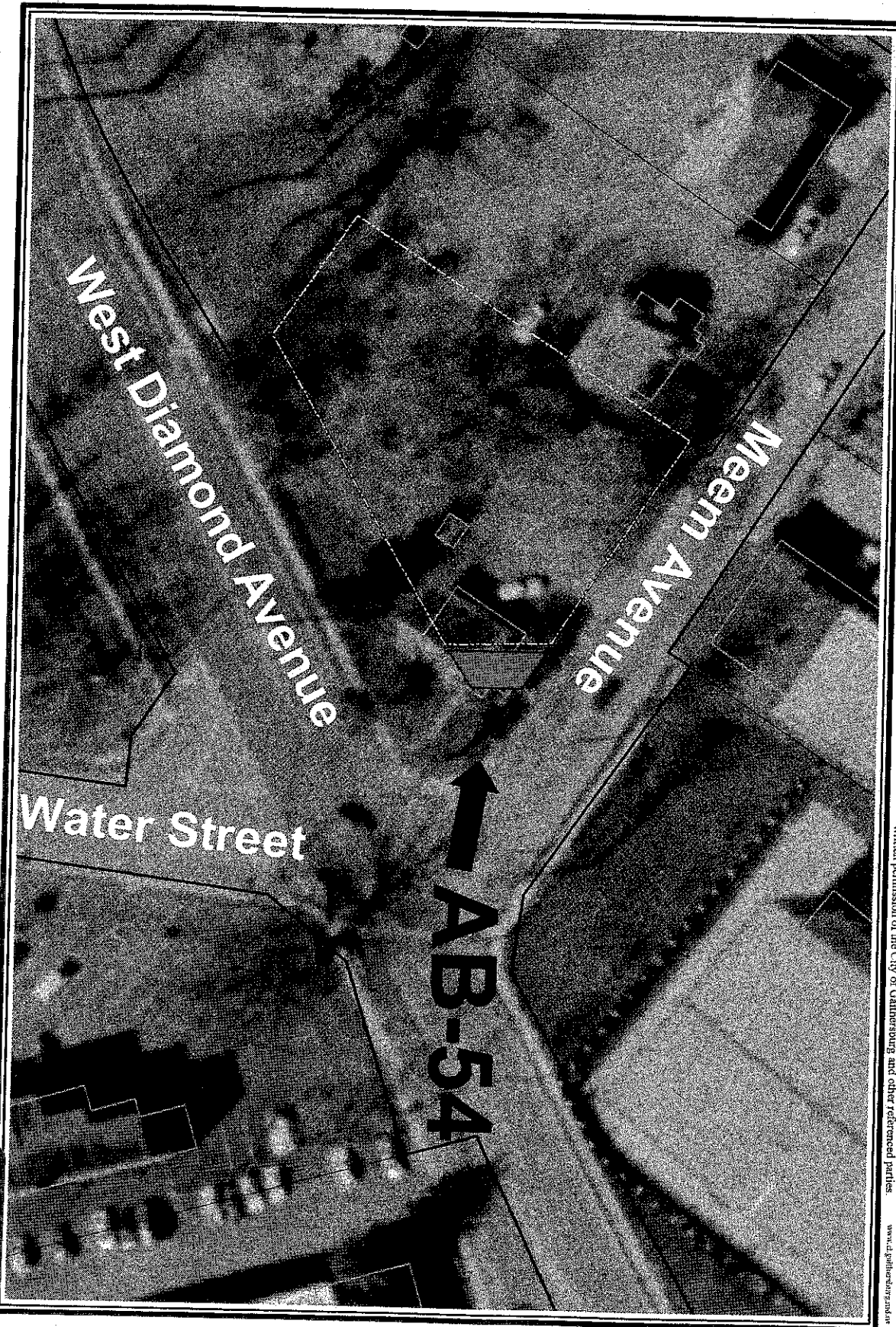
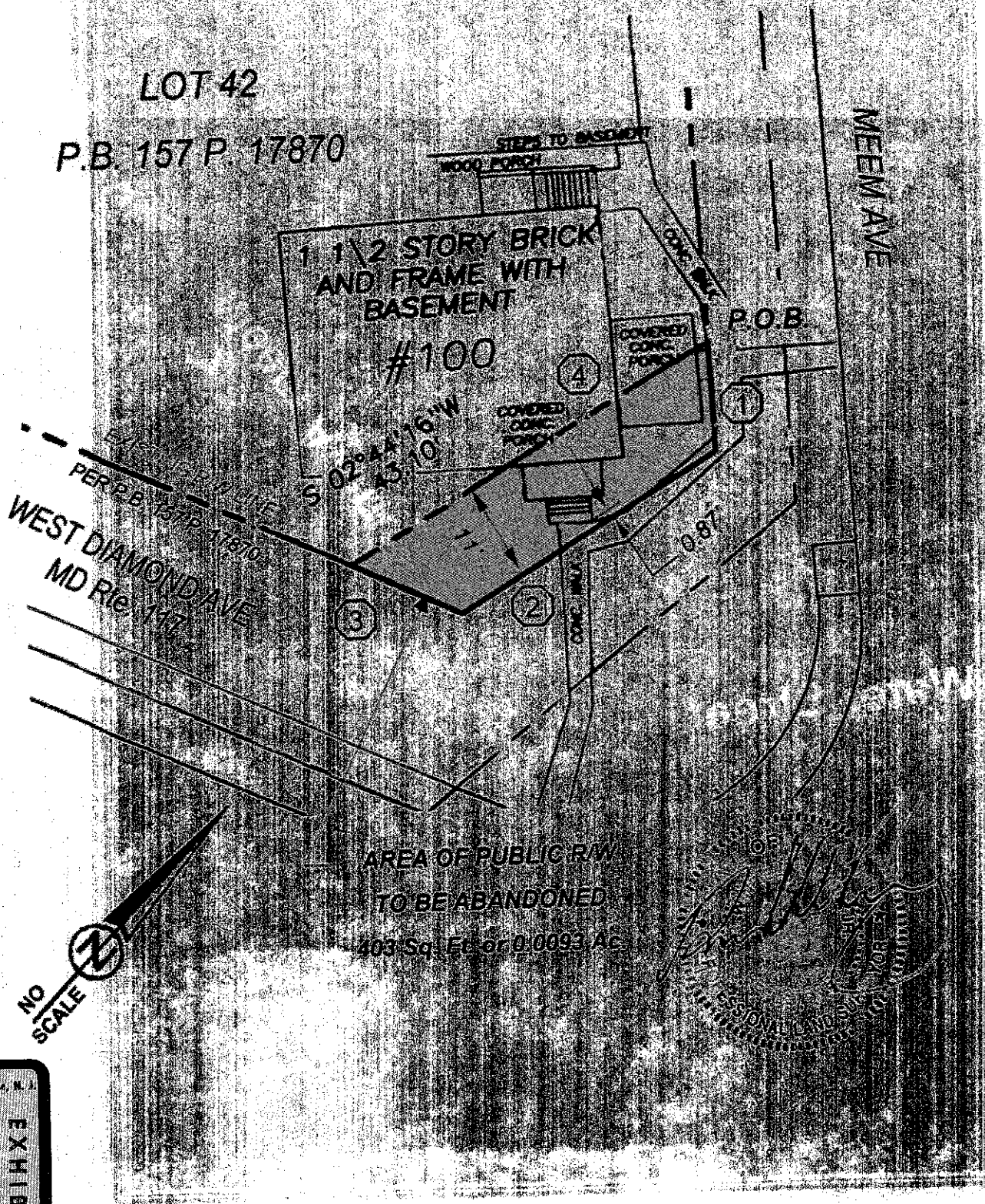


EXHIBIT
#16
AB-54
7/01/02

P.B. 157 P. 17870



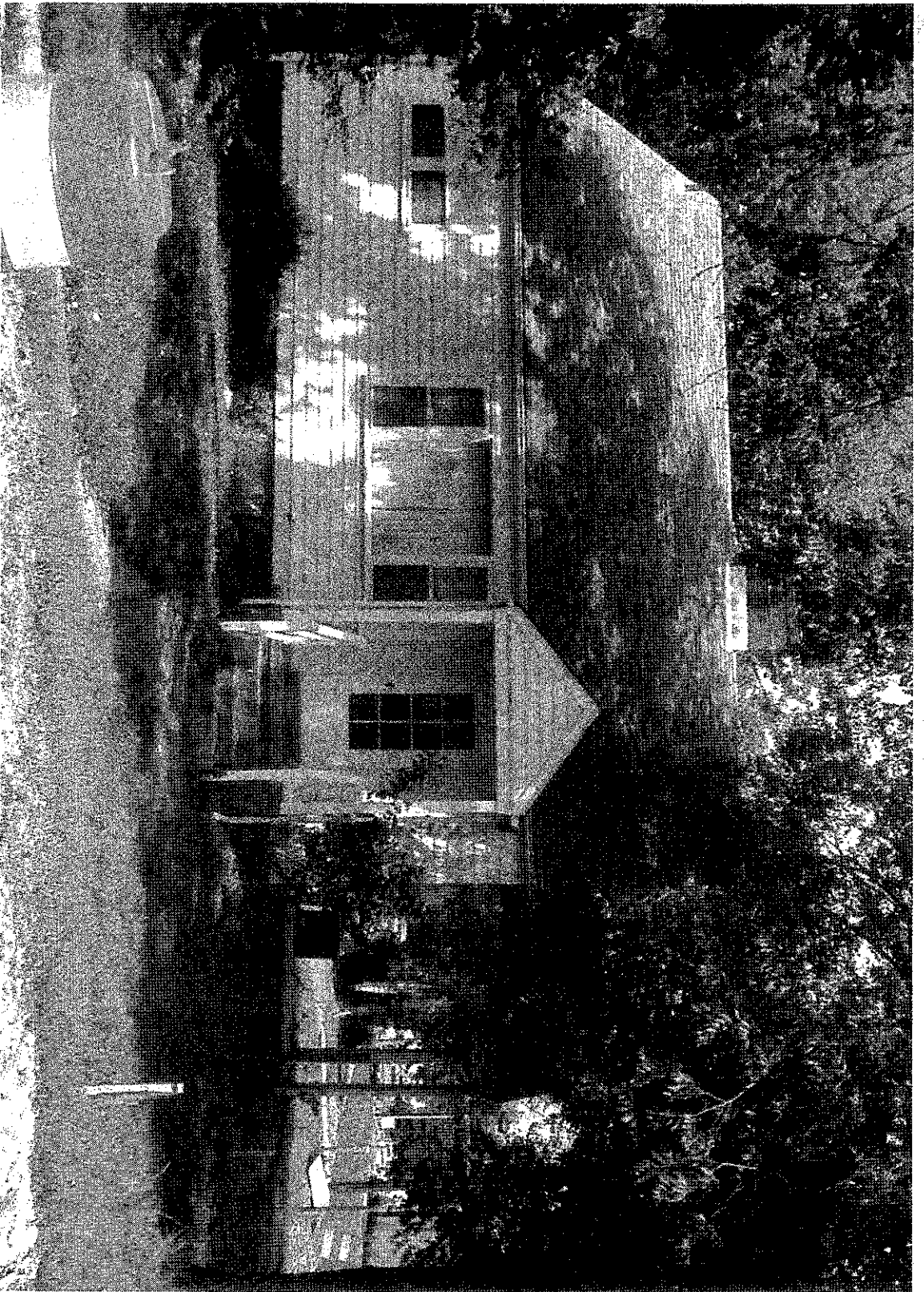
**NO
SCALE**

PENGAD-BAYONG, N. J.

EXHIBIT

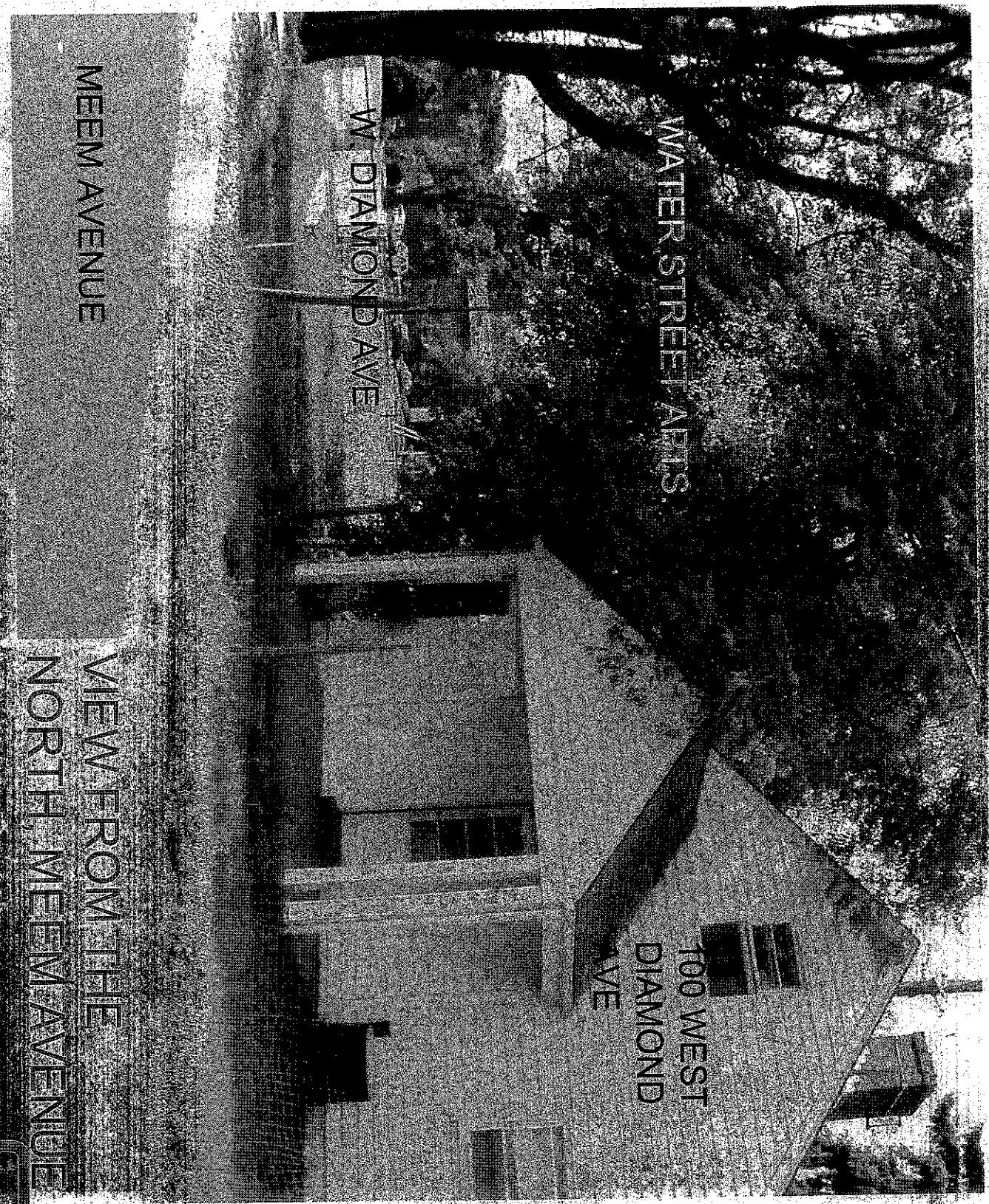
AB-54

7/01/02



View from the East of 100 West Diamond Avenue from
the intersection of Meem and West Diamond

EXHIBIT
18
AB-54
7/01/02
PENGAD-Bojenna, H. J.



WATER STREET APTS.

W DIAMOND AVE

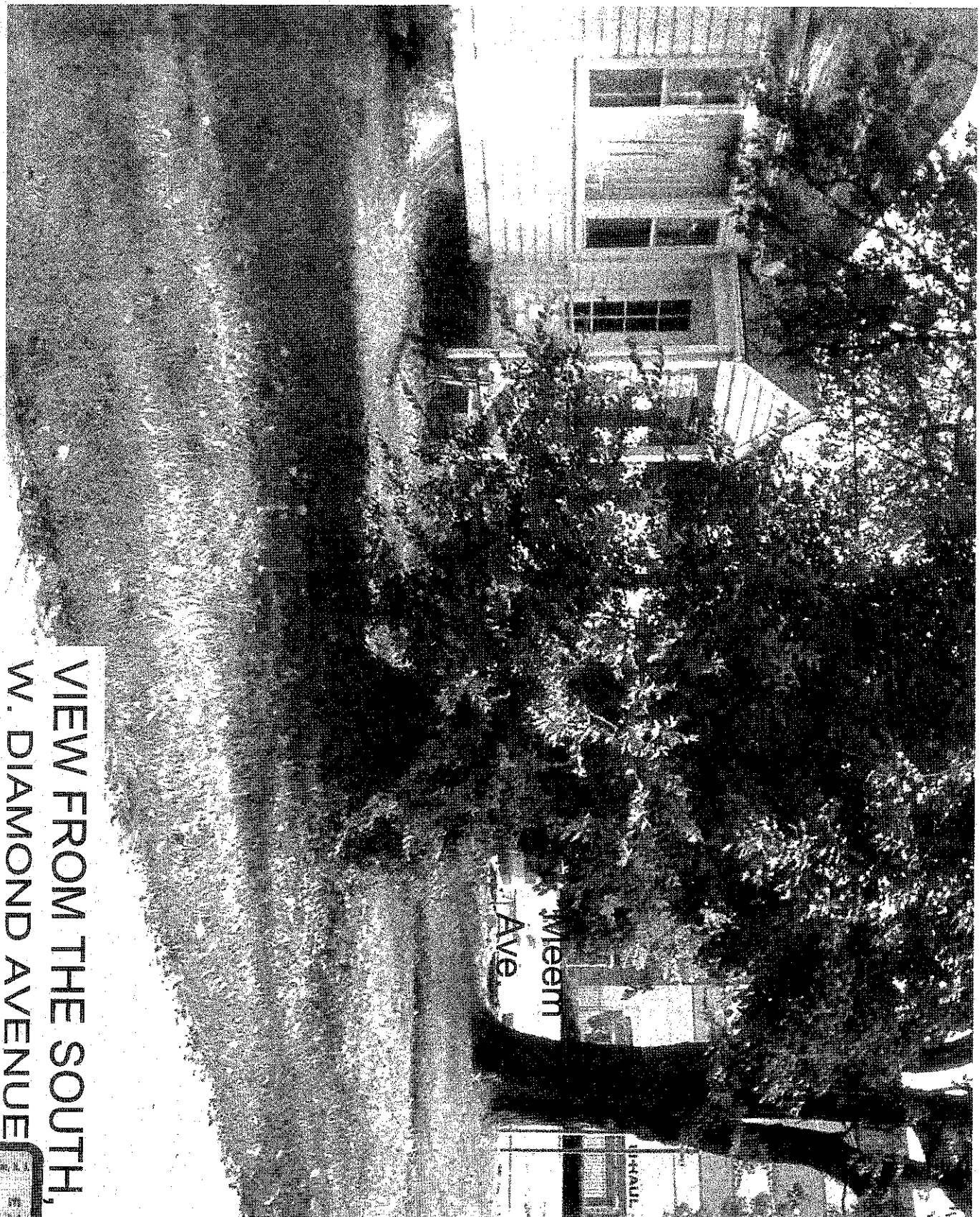
MEEM AVENUE

100 WEST
DIAMOND
AVE

VIEW FROM THE
NORTH, MEEM AVENUE

PERIOD REPORT, 1902

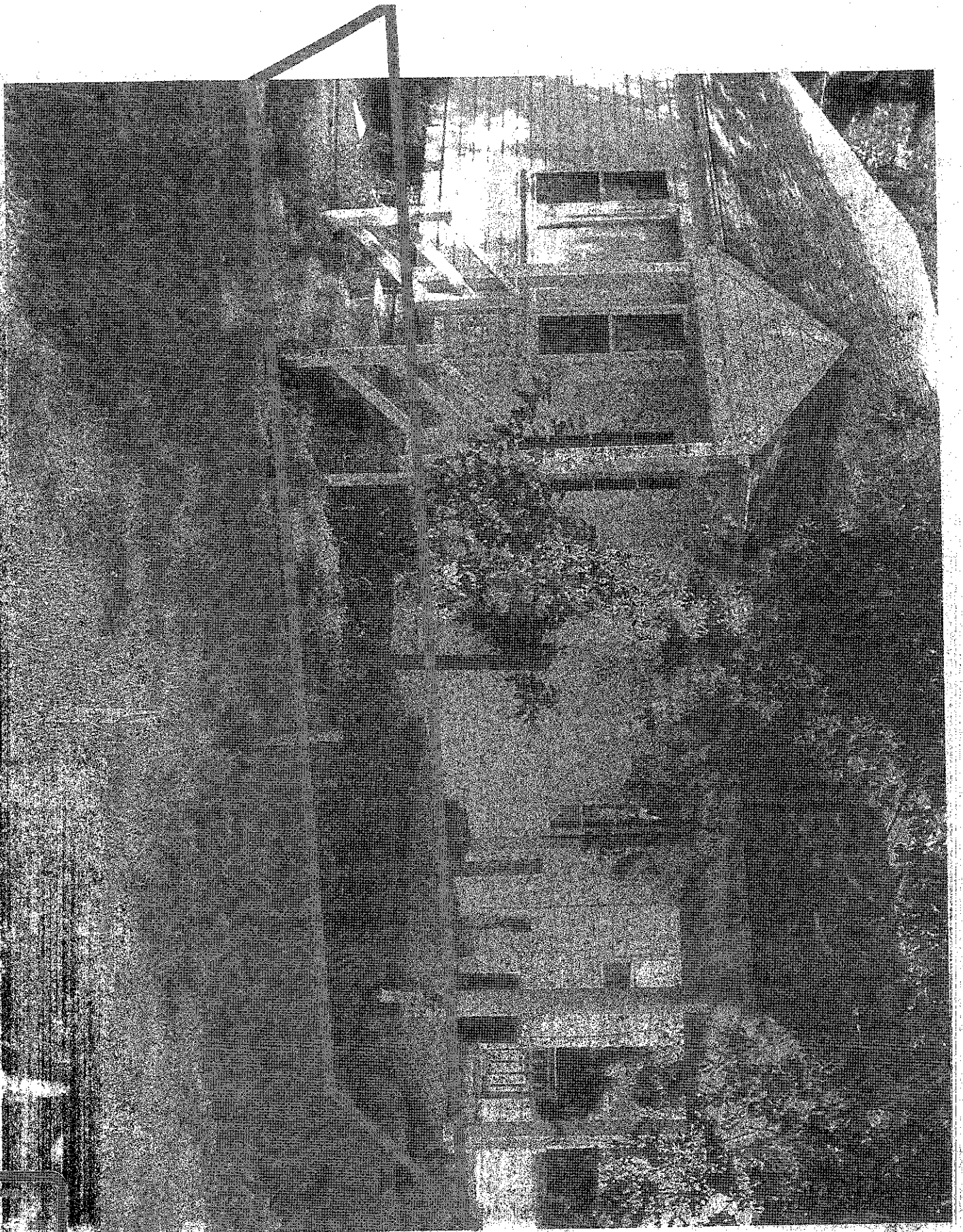
EXHIBIT
#19
A13-574
7/01/02



VIEW FROM THE SOUTH,
W. DIAMOND AVENUE

EXHIBIT
20
AB-34
7/11/02

PERIOD: 1/21/02
EXHIBIT
#21
AB-54
7/01/02



COMMUNICATION: PLANNING COMMISSION

MEMORANDUM TO: Mayor and City Council

FROM: Planning Commission

DATE: June 20, 2002

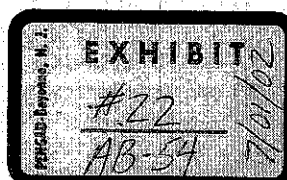
SUBJECT: AB-54 -- The application requests abandonment of approximately 0.093 acres or 403 square feet of land dedicated for right-of-way for Meem and West Diamond Avenues at 100 West Diamond Avenue, Lot 42, Meem's Addition, Gaithersburg, Maryland.

At its regular meeting on June 19, 2002, the Planning Commission made the following motion:

Commissioner Bauer moved, seconded by Commissioner Levy, that AB-54, be recommended for APPROVAL with the following condition:

1. The applicants, applicants' successors or assigns shall rededicate to public use to the extent of the current dedication if the applicants' property is redeveloped in the future or if the State of Maryland requires the property for future right-of-way improvements.

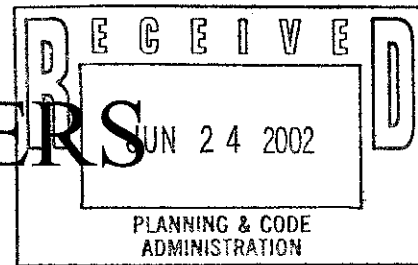
Vote: 4-0



Planning Director _____ Jennifer Russel

GAZETTE NEWSPAPERS

9030 Comprint Court, Gaithersburg, MD 20877. 301-670-2544

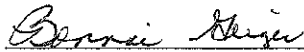


This is to certify that the annexed advertisement of:

The Notice of Public Hearing

was published in the Gaithersburg Gazette Newspapers, a weekly newspaper published in Montgomery County, Maryland. The ad appeared once a week for (1) week(s) before the 20th day of June, 2002.

Gaithersburg Publishing Company


Copy of ad attached



BONNIE GEIGER
Notary Public, State of Maryland
County of Frederick
My Commission Expires September 7, 2005

NOTICE OF PUBLIC HEARING

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**MONDAY
JULY 1, 2002
AT 7:30 P.M.**

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Trudy M. W. Schwarz
Senior Planner
11/6/19/02 (G)

